

**STATEMENT
OF
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DEPARTMENT OF JUSTICE**

REGARDING

HESHAM MOHAMED ALI HEDAYET

BEFORE THE

**HOUSE SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS
HOUSE COMMITTEE ON THE JUDICIARY**

**WEDNESDAY, OCTOBER 9, 2002
3:00PM
2141 RAYBURN HOUSE OFFICE BUILDING**

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to share with you information resulting from the Immigration and Naturalization Service's (INS') review of its interactions with Hesham Mohamed Ali Hedayet, the Egyptian immigrant who shot and killed two people at Los Angeles International Airport on July 4, 2002. At the time of this tragedy, Mr. Hedayet was a lawful permanent resident of the United States. In December 1992, Mr. Hedayet filed an asylum application with INS. That application was denied in October 1995. Later, after his wife won a visa through the annual diversity visa lottery, Mr. Hedayet filed an adjustment of status application with INS. The INS interviewed him on this application and approved it in August 1997.

Particular attention to the INS role in this case was prompted by reports that Mr. Hedayet claimed in an asylum interview with INS that he had been falsely accused of belonging to Gama'a al-Islamiyya. The Department of State designated Gama'a al-Islamiyya as a terrorist organization in 1997, almost two years after INS denied his asylum application. Before I begin an overview of Mr. Hedayet's interaction with INS, I want to assure you a thorough review of all information available to INS about Mr. Hedayet's background reveals no enforcement or intelligence information that he was ever associated with a terrorist organization, or had engaged in any criminal activity prior to July 4, 2002. In addition, based on a thorough review of Mr. Hedayet's alien file, computer system records, and relating receipt files, INS has concluded that its decisions in connection with the asylum and adjustment of status applications were appropriate under the laws, regulations, policies and procedures in existence at the time.

My testimony will outline how INS followed regulations and procedures in place at the time Mr. Hedayet's applications were processed, and how INS has both improved processing procedures and strengthened security measures since then. However, it is important to understand that, even had Mr. Hedayet's applications been processed under the improved procedures in existence today, the outcome may have been the same. The current procedures, however, provide for a more thorough investigation and more opportunities to scrutinize potentially problematic cases.

As I noted, there was no evidence that Mr. Hedayet was ever associated with a terrorist organization or had engaged in criminal activity. The only indication that Mr. Hedayet could pose a threat to others in the United States was his own assertion that he was falsely accused of being a member of an organization that committed terrorist activities and that these allegations were used as a pretext to persecute him because of his religious beliefs. His asylum claim was found not entirely credible and was denied. There is no evidence that the alleged false accusation of his membership in the terrorist organization was true or that he was actually a member of such an organization.

A brief chronology of INS interaction with Mr. Hedayet is as follows:

On July 31, 1992, he was admitted to the United States as a visitor with permission to remain in the United States until January 25, 1993. The multiple entry B-2 visa, valid for one year, was issued on July 13, 1992 at the American Embassy in Cairo, Egypt. On December 29, 1992, Mr. Hedayet filed an asylum application claiming discrimination and police harassment due to his religious beliefs. An application for employment authorization accompanied the asylum application. The employment authorization application was approved on March 8, 1993, and an employment authorization document (EAD) was issued. Mr. Hedayet was interviewed regarding his asylum claim on March 30, 1993. He testified that he had been arrested and tortured multiple times, and was also made to sign documents admitting his membership in Gama'a al-Islamiyya. He states that he is not a member of Gama'a al-Islamiyya but of Assad Eben Furat Mosque Association, an organization that advocates the application of Islamic laws in Egypt.

On March 18, 1994, Mr. Hedayet applies to renew his EAD based on the pending asylum application. His application is approved and a new EAD is issued. On March 7, 1995, INS issues a Notice of Intent to Deny the asylum application. On April 27, 1995, the INS approves another renewal of Mr. Hedayet's EAD based on the pending asylum application.

The notice of denial on Mr. Hedayet's asylum application is dated October 19, 1995. In addition, the INS issued an Order to Show Cause charging him as a deportable alien based on his overstay of his visitor visa. These are returned to INS as undeliverable mail on January 30, 1996. In June 1996, INS renews Mr. Hedayet's employment authorization after reviewing his file and determining that he was not in deportation proceedings and therefore entitled to the EAD based on his pending asylum application.

Mr. Hedayet files an adjustment of status application in January 1997 as the spouse of a diversity visa recipient, and his fingerprints are submitted to the FBI for a criminal history check. In May 1997, the INS initiates name checks for derogatory information on Hedayet with the FBI and CIA. Mr. Hedayet is interviewed and his application is approved for adjustment of status on August 29, 1997.

Improvements to Asylum Processing

It is important to acknowledge that numerous improvements have taken place in the years since Mr. Hedayet first filed his asylum application. I would like to use the remainder of my statement to highlight these improvements in processing both asylum and adjustment of status applications.

First, it is likely Mr. Hedayet would have received personal service of charging documents placing him in removal proceedings two weeks after his asylum interview.

Second, if he failed to appear for his hearing before the Immigration Judge, it is likely he would have been ordered removed in absentia if the INS could prove he was served with the charging document. He would also have been ineligible for employment authorization because of his failure to appear.

Third, if he had appeared for his hearing before the Immigration Judge, he still would not have been eligible for employment authorization, unless his asylum application was granted by the Immigration Judge or was pending more than 180 days.

Fourth, as soon as INS received his application, it would have automatically sent his biographical information electronically to the Central Intelligence Agency (CIA) and Federal Bureau of Investigation (FBI) for background checks, and scheduled him to have his fingerprints taken at an Application Support Center.

Finally, his allegation of being accused of membership in a terrorist organization would have triggered referral of his case to Asylum Headquarters (HQASY), which would then consult with the National Security Unit and the National Security Law Division, for further scrutiny.

These distinctions are a result both of asylum reform and security measures INS has continued to strengthen over the past six years. In 1995, asylum reform streamlined the asylum process and created a seamless referral process, giving asylum offices access to the Immigration Courts' calendars to directly schedule referred applicants for hearing in Immigration Court. The requirement that most applicants return to be served with a decision ensures timely decision-making and clear evidence of service of charging documents.

Under asylum reform procedures, it is likely Mr. Hedayet would have been scheduled for an interview within 43 days from the date he filed his application. Importantly, he would have been scheduled to return to the asylum office two weeks after his interview to be served with the decision on his application. As he was found ineligible for asylum and was not in valid status, the asylum office would have personally served him with charging documents within 60 days from the date he applied for asylum, thereby placing him in deportation proceedings. The charging documents would have contained a time and date for his first hearing with the Immigration Judge. Because Immigration Judges are required by statute to complete most asylum cases within 180 days, in all likelihood, Mr. Hedayet would have received a final determination on his asylum application and, if found ineligible, received an order of deportation or voluntary departure, within 180 days from the date he applied for asylum. If he failed to appear for his hearing before the Immigration Judge, the Immigration Judge would likely have ordered him removed in

absentia, rather than have administratively closed the case, because INS would have been able to present proof of service of the charging documents.

Additionally, Mr. Hedayet would not have been eligible to apply for employment authorization until 150 days from the date he filed his asylum application. Further, he would not have been eligible for a grant of employment authorization, unless his application remained pending 180 days after the date of filing or was granted by the Immigration Judge. If Mr. Hedayet had not shown up to pick-up his decision two weeks after the interview, he would have been ineligible to apply for employment authorization. If he failed to appear for the hearing before the Immigration Judge, he would have been ineligible for employment authorization unless he could establish exceptional circumstances for the failure to appear.

Current directives require Asylum Offices to notify Asylum Headquarters (HQASM) of asylum claims involving potential terrorists, including any case in which an applicant claims he or she has been accused of terrorist activities or terrorist associations. However, at the time that INS denied Mr. Hedayet's asylum claim in April 1995, specific notification requirements for any asylum applicant who admitted to having been accused of being a member of a terrorist organization were not yet established. Moreover, the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) had not yet been enacted, so the current list of organizations designated as terrorist organizations by the Secretary of State pursuant to section 219 of the INA was not yet in existence. The Department of State published its first list of 30 terrorist organizations on October 8, 1997. It included the Gama'a al-Islamiyya.

At the time of the decision on Mr. Hedayet's asylum application, procedures required biographical information to be sent to the CIA by sending the CIA a copy of the Form G-325, Biographic Information, only if the case was recommended for approval. Also, at that time, a fingerprint card submitted by the applicant was sent to the FBI only if the case was recommended for approval. Under current procedures, electronic tapes with biographical information on all asylum applicants are sent to the CIA and the FBI. If those agencies have any adverse information on the applicant, that information is transmitted to INS' National Security Unit (NSU). All applicants are routinely scheduled to have their fingerprints taken electronically at an Application Support Center and the asylum application cannot be approved until INS receives the results of the FBI fingerprint check. In addition, background checks are conducted against the Interagency Border Information System (IBIS) on all asylum applicants at the time of filing and before a decision is made if the last check was done more than 35 days prior to the decision. The application itself is sent to the Department of State for an opportunity to provide any comments or information. Records indicate that Mr. Hedayet's asylum application, along with the asylum officer's assessment, were sent to the Department of State on January 30, 1995. No response was received which was standard procedure when the Department of State either had no interest in the case or no additional information to add to the case.

Improvements to Adjustment of Status Processing

The record of Mr. Hedayet's adjustment processing indicates that INS received his application on or before January 6, 1997, and that his fingerprints were forwarded to the FBI for a criminal history check on that date. In addition, Mr. Hedayet's adjustment of status application was filed with payment of the additional penalty sum, as required under section 245 (I) of the Immigration and Nationality Act (INA).

The INS Los Angeles District Office had jurisdiction to adjudicate the application despite the fact that an Order to Show Cause (OSC) had previously been filed with the Immigration Court. The controlling regulation at that time was found in 8 CFR 245.2(a)(1) as in effect on January 1, 1997, and states, "After an alien has been served with an order to show cause or warrant of arrest, his application for adjustment of status under section 245 of the Act or section 1 of the Act of November 2, 1966 shall be made and considered only in proceedings under part 242 of this chapter." Former Part 242 referred to deportation proceedings within the purview of the Immigration Court. In this case, the record clearly established that the OSC had not been served upon the Mr. Hedayet and, therefore, that INS had jurisdiction over the application.

At the time Mr. Hedayet filed his adjustment of status application, INS had discretion to serve him

with a copy of the OSC, or to adjudicate the application. If INS had decided to serve him with the charging document, the Immigration Court would then have had jurisdiction to adjudicate the adjustment of status application. As a general matter, INS exercises favorable discretion as early in its processes as possible in recognition of the government's and the alien's interest in avoiding unnecessary legal proceedings. Although Mr. Hedayet's record does not reflect the decision process not to serve him with the charging document, it would have been considered an unnecessary step to do so when he was prima facie eligible to adjust his status.

Improvements to Application Processing

Since INS adjudicated Mr. Hedayet's adjustment of status application, INS has made several improvements to application processing, particularly in the area of background checks. These improvements include:

- Electronic transmission of applicant fingerprint checks directly to the FBI after verification of applicant's identity by INS personnel;
- Confirmed FBI responses to fingerprint checks and review of criminal record, if applicable, before scheduling an applicant for interview;
- Electronic data exchanges with the FBI and CIA on biographic information;
- Adverse information revealed by FBI or CIA biographic information checks is transmitted to NSU and adjudication of the application withheld until the information is resolved;
- IBIS ("look out") checks on all applications and petitions at the time of filing and again before adjudication if the first check was conducted more than 35 days prior to adjudication; and
- A national Standard Operating Procedure governing all adjustment of status applications and a Quality Assurance program to ensure compliance with the standard procedures.

Conclusion

This concludes my testimony and I look forward to responding to any questions that you may have.